

*Alan Smith*

HET.  
HET.

Summary Notes on Hearing Held at The  
San Juan County Courthouse, Monticello  
On February 19, 1970 Concerning the  
Distribution of Water On Verdure Creek

*Verdure Creek*

The meeting was convened at shortly after 11:00 A.M. The following interested persons were in attendance: John Bene, Deputy State Engineer; Kenward H. McKinney, Area Engineer, Southeastern Utah Area, Division of Water Rights; S. K. Barton; Clyde M. Barton; Karl S. Barton; Don Barton; Francis Barton; Mont Smith; Eugene Porter; A. T. Fillingim; William Ervin; Klea W. Palmer; Merrill Stevens; John D. Lewis and Max Dalton. All individuals present except the representatives of the State Engineer claimed to have water rights on Verdure Creek or on streams to which Verdure Creek was tributary.

Mr. Bene conducted the meeting. He opened the meeting by outlining the general problem concerning certain reservoirs at the Blue Mountain Ranch owned by Eugene Porter. Mr. Bene asked what had transpired concerning these reservoirs in the two years since he and Mr. Earl Staker of the State Engineers office had last discussed this matter with the parties concerned. The participants indicated that little or nothing had been done on this matter. Mr. Bene then outlined specific problems with respect to water rights, illegal reservoirs, etc.

Mr. Karl Barton then outlined some of the development of water rights on the creeks. He presented a claim by N. A. Decker of Bluff, indicating that all of the water of South Montezuma Creek had been diverted by him on November 7, 1884. This claim was recorded in Book B, page 62. Mr. Barton also presented Homestead Certificate No. 7592, Application No. 15008 in the name of Willard Butt covering 160 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$  and the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Sec. 29, T34S, R23E, SLB&M. This certificate is recorded in Book S of Deeds on page 217.

There was then a general discussion between the participants about the particulars of the operation of the reservoirs for which there is apparently no established right. Mr. Porter indicated that he had a diligence claim on certain waters of Verdure Creek. Mr. Bene indicated that this was probably a diligence right for stockwatering directly on the stream. He also indicated that a diligence claim was not indisputable until it had been concurred in by the court. It was indicated that perhaps this would now be necessary. It was then suggested by a participant that perhaps the reservoirs could be destroyed. Mr. Porter indicated he would not consent to the destruction of the reservoirs except by court order. Mr. Bene explained that adverse use does not establish a water right. The Sheley Report on Water Rights was mentioned by participants.

A discussion on the flow characteristics of Verdure Creek was next discussed. It was indicated that there are years when Verdure Creek did not flow year round. It was indicated that since 1952 there have been only 2 or 3 years that the stream has had a continuous flow from one year to the next.

Mr. Porter indicated that the State Engineer had indicated that since the reservoirs had been in place for more than 25 years, a court would probably not order the reservoir impounding works destroyed. Mr. Bene said that this might be so but that without a valid water right it could be ordered that the reservoirs not impound any water.

The prior rights owners contended that their water is lost to them because of the seepage and evaporation which takes place along the extended conveyance route and from the reservoirs. Presently the water is impounded by a reservoir on the main stream. It is conveyed along a slope above the main channel to a second reservoir. It is then returned to the main channel of Verdure Creek. There is a third reservoir which is off channel. After much discussion, Mr. Porter indicated that he would agree to eliminate the conveyance route to the middle reservoir. The water would be conveyed from the upper reservoir directly back into the main channel of Verdure Creek. This would effectively eliminate the storage of Verdure Creek water in the middle reservoir. Mr. Karl Barton then suggested that all dams be removed except the dam on the main creek. He indicated that the middle and lower dams blocked stream channels tributary to Verdure Creek. Mr. Porter <sup>was</sup> asked what his position was on this suggestion. He indicated that he didn't know at this time precisely what his position would be. After additional discussion it was concurred in by all present that the upper reservoir on the main stream of Verdure Creek could remain providing the water was returned to the main stream of Verdure Creek just below the reservoir; that the ditch from the upper reservoir to the middle reservoir would be filled in and obliterated; that no more work of any kind would be done on the middle and lower reservoirs and that they would be allowed to silt up and otherwise deteriorate naturally. There was to be no additional reservoir or channel construction by Mr. Porter in the area except as provided by law. There was to be no work done on the upper reservoir which would increase the storage or otherwise impair the prior rights of other users. A written agreement effecting the above was to be prepared by the office of the State Engineer.

Mr. Porter was queried by a participant regarding what, if any, water right was conveyed with certain lots which Mr. Porter had disposed of. Mr. Porter indicated that no water right was conveyed with any of the lots and that it had been specifically brought to the attention of the purchasers that there was no water right conveyed with the property.

A question was asked regarding what action could be taken against persons who interfered with the natural flow of streams, etc. It was stated that if such interference interfered with prior water rights the matter should be referred to the State Engineer.

There being no further business the hearing was adjourned at 12:50 P.M.

WCK